



UNITED STATES ENV

NEW

MAR - 9 2000

Robert C. Shinn, Jr.  
Commissioner  
New Jersey Department of  
Environmental Protection  
P.O. Box 418  
Trenton, New Jersey 08625-0418

Dear Mr. Shinn:

Enclosed please find the document entitled "Amendment 1 to the Memorandum of Agreement between the U.S. Environmental Protection Agency and New Jersey Department of Environmental Protection: Schedule to Establish Total Maximum Daily Loads for all Waters Listed on the State of New Jersey's 1998 303(d) List." This document amends Section IV, Paragraph 12, A.3. and H.2. of the schedule for TMDL development contained in the Memorandum of Agreement (MOA) that we signed on May 12, 1999.

I have enclosed two signed copies of this amendment and a copy of the original MOA. Please sign both copies, keep one signed copy for your records, and mail one signed copy to me.

NJDEP and EPA have made substantial progress towards establishing TMDLs in accordance with the TMDL schedule contained in our signed MOA:

- EPA issued final notice, in the January 14, 2000 Federal Register, of our establishment of a TMDL for nickel in the Hackensack River.
- NJDEP submitted the Whippany River fecal coliform TMDL on December 30, 1999 and EPA approved it on February 24, 2000.
- NJDEP submitted the Delaware Estuary/River volatile organics TMDL in a letter dated February 16, 2000. EPA is currently reviewing this TMDL.

The attached Amendment to the MOA presents the revised schedule for completing TMDLs, as necessary, for those waters in the Whippany River Watershed included on the Candidate TMDL Waters-Sub-List II A and II B of the State's 1998 303(d) list. These waters are suspected of having water quality impairments due to certain metals and ammonia or of being biologically impaired.

By mutual agreement, EPA and NJDEP will establish a joint workgroup whose charge will be to develop a plan over the next 6 months to assess and establish, as necessary, TMDLs within the timeframe specified in the enclosed amendment to the MOA for the waters of the

Whippany River Watershed listed on Sub-List II A and II B. In addition, EPA is currently finalizing the proposed revisions to its Section 303(d) TMDL Regulations and expects to issue the Final Rule this year. Building on the experience gained by the workgroup in addressing the Sub-List II A and II B waters of the Whippany River Watershed, and taking into account any program changes reflected in the 303(d) TMDL Final Rule, we have agreed that, within three months of the effective date of the 303(d) TMDL Final Rule, we will amend the MOA-based schedule for establishing TMDLs, as necessary, for the remaining waters included on the Candidate TMDL Waters-Sub-List II A and II B of the State's 1998 303(d) list.

On August 8, 1997, Robert Perciasepe, EPA, Assistant Administrator for Water, issued a policy memorandum entitled "New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)." One of the new policies implemented by this memorandum was the requirement to develop -a schedule to establish final TMDLs. The memorandum stated:

"Each EPA Region should secure a specific written agreement with each State in the Region establishing an appropriate schedule for the establishment of TMDLs for all waters on the most recent section 303(d) list, beginning with the 1998 list. Each State schedule should reflect the State's own priority ranking of the listed waters and be integrated with the Environmental Performance Partnership Agreement process. These State schedules should be expeditious and normally extend from eight to thirteen years in length, but could be shorter or slightly longer depending on State-specific factors."

In accordance with the policy outlined above, we have agreed that, in no case, will any amended schedule to establish TMDLs, as necessary, for the waters included on the Candidate TMDL Waters-Sub-List II A and II B of the State's 1998 303(d) list, exceed March 31, 2011, thirteen years after EPA's deadline for submittal of the State's 1998 303(d) list.

I appreciate NJDEP's commitment to establish TMDLs. The establishment and implementation of these TMDLs will play a major role in the attainment of the Fishable/Swimmable goals of the Clean Water Act.

If you have any questions, please contact me at (212) 637-5000.

Sincerely,

  
Jeanne M. Fox  
Regional Administrator

Enclosure

cc: Lance Miller, NJDEP

Amendment 1 to the Memorandum of Agreement  
between.  
U.S. Environmental Protection Agency, Region n  
and  
New Jersey Department of Environmental Protection:

Schedule to Establish Total Maximum Daily Loads,  
for all Waterbodies Listed on the State of New Jersey's 1998 303(d) List.

- I. Amendment 1: Amendment 1 revises Section IV, Paragraph 12 H.2. of the original MOA by striking the statement "Within 9 months of the date that this MOA is signed by both , parties,..." and adding "By August 31, 2000,..." The remainder of Paragraph 12 H.2. remains unchanged.

Section IV, Paragraph 12 H.2., is amended, as follows: .

"H.2. By June 30, 2007:

○ NY/NJ Harbor PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform TMDLs:

- NJDEP will, in cooperation with the New York/New Jersey Harbor National Estuary Program, public notice; respond to comments received during the public comment period; establish; and .submit to EPA, TMDLs for PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform in the NY/NJ Harbor by June 30, 2007.
- By August 31, 2000, NJDEP with assistance from EPA, and the Harbor Estuary Program will develop a schedule, including milestones, for the establishment of the above TMDLs. This schedule may shorten but will not extend the time frame for TMDL development in NY/NJ Harbor.
- Once agreed upon by both NJDEP and EPA, any accelerated schedule for establishment of TMDLs in NY/NJ Harbor will be incorporated into this MOA."

II. Amendment 2:

Amendment 2.A. revises Section IV, Paragraph 12 A.3. of the original MOA by including the following schedule to assess and propose de-listing or develop TMDLs for all waters located within the Whippany River Watershed, listed for biological impairment and for heavy metals and ammonia on Sub-List II A & B of NJDEP's 1998 303(d) list:

- a. Waters of the Whippany River Watershed Listed for Metals on Sub-List II B: 1) NJDEP, with EPA's assistance, will, over the next 12 months, complete an assessment of waters of the Whippany River Watershed identified as candidate waters for metals and ammonia on Sub-List II B of NJDEP'S 1998 303(d) list and identify those waters which exceed water quality standards for one of more of the following metals (arsenic, cadmium, chromium v, copper, lead, and mercury).

If the applicable water quality standard is below the PQL or MDL (whichever is appropriate), a TMDL will not be required until an exceedance is confirmed.

2) By June 30, 2002: NJDEP will establish TMDLs for those waters within the Whippany River Watershed for which it has determined that one or more of the above metals exceed water quality standards. These TMDLs will be established and submitted to EPA by June 30, 2002.

b. Waters of the Whippany River Watershed listed for biological impairment on Sub-List II A & B of NJDEP's 1998 303(d) list:


1) By December 31, 2001: NJDEP will complete an assessment of those waters within the Whippany River Watershed identified as candidate waters based on biological impairment on Sub-List II A & B of NJDEP's 1998 303(d) list. The goal of the assessment is to identify whether these biologically impaired waters are impacted by specific pollutants) or pollution.

2) By June 30, 2003: NJDEP will establish TMDLs for those waters within the Whippany River Watershed for which it has identified specific pollutant(s), which exceed water quality standards, as responsible for causing the biological impairment. These TMDLs will be established and submitted to EPA by June 30, 2003.

**III. Effective Date**

**Amendment I to the MOA shall become effective on the date this document is last signed by the parties below.**

**For the New Jersey Department of Environmental Protection:**

By:   
Robert C. Shinn, Jr., Commissioner  
New Jersey Department of Environmental Protection

3-27-00  
Date

**For the U.S. Environmental Protection Agency, Region II:**

By:  for

3/9/2000



Memorandum of Agreement  
between  
U.S. Environmental Protection Agency Region II  
New Jersey Department of Environmental Protection  
Schedule to Establish Total Maximum Daily Loads  
for all Waterbodies Listed on the State of New Jersey's 1998 303(d) List

I. Background:                   —

1. The total maximum daily load (TMDL) program is statutorily authorized by Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313 (ii); CWA § 303(d) and its implementing regulations found at 40 CFR § 130.7, provide for:
  - A. Identification of waters for which applicable technology-based effluent limitations and other controls are not stringent enough to implement water quality standards;
  - B. Establishment of a priority ranking for water quality-limited segments (WQLSs) still requiring TMDLs; and,
  - C. Establishment of TMDLs, as necessary, for pollutants responsible for non-attainment of water quality standards in WQLSs.
2. This Memorandum of Agreement (MOA) includes a schedule to establish TMDLs for all WQLSs still requiring TMDLs, as identified in the NJDEP 1998 § 303 (d) list; and procedures by which TMDLs will be established as necessary for WQLSs identified on subsequent § 303(d) lists.

II. Purpose:

3. The purpose of this MOA is to set forth the basic covenants and commitments between EPA Region II and the NJDEP, with respect to the development of a schedule to establish TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list, and procedures by which TMDLs will be established, as necessary, for WQLSs identified on subsequent § 303 (d) lists.
4. Region II and the NJDEP hereby agree to maintain the high level of cooperation, coordination, and technical support necessary to assure the successful and effective establishment of TMDLs in accordance with the schedule below.

### III. NJDEP and EPA Responsibilities:

5. Under this MOA, NJDEP agrees to establish TMDLs for all waterbodies included on the New Jersey 1998 § 303(d) list, or provide the information necessary to remove waterbodies from the list, as described in the schedule below. TMDLs established by NJDEP shall, at a minimum, include: an explanation of the procedures and assumptions used to develop the TMDL; the TMDL calculation; aggregate and individual waste load allocation (WLA); an aggregate load allocation (LA) or percent load reduction; and, a margin of safety (MOS).
6. The NJDEP shall provide a public comment period and respond to all comments received during the public comment period before submitting State established TMDLs to EPA for its review and decision. NJDEP and EPA shall work together to assure the TMDLs are consistent with federal and State requirements prior to being public noticed and prior to being issued as final TMDLs.
7. In fulfillment of New Jersey's responsibilities under its Continuing Planning- Process; the NJDEP shall incorporate the final EPA approved/established TMDL/WLA/LA into its current Areawide Water Quality Management Plan(s). The final EPA approved/ established TMDL shall be the governing TMDL, and as such shall be included in NJDEP's current Areawide Water Quality Management Plan(s), regardless of any TMDL previously incorporated by NJDEP into its current Areawide Water Quality Management Plan(s).
8. NJDEP shall, in accordance with the following schedule, establish TMDLs for all WQLSs listed on its 1998 § 303(d) list, or propose de-listing of specific WQLSs, in accordance with the applicable provisions of § 303(d) of the Clean Water Act, and its implementing regulations found at 40 C.F.R. § 130.7 and N.J.A.C. 7:15-5 and 6. NJDEP shall develop a proposed de-listing process for New Jersey and submit it to EPA for approval. EPA and NJDEP shall work together to develop mutually acceptable de-listing procedures which meet both federal and State requirements. .
- 9\_ All future §303(d) lists shall include a proposed schedule for TMDLs for all WQLSs contained on those lists and shall also include any changes or updates to the :schedule for TMDLs contained in this MOA. These lists will identify any "fast-track" TMDLs. ("Fast track TMDLs" are any individual TMDLs that can be completed sooner than other TMDLs in a given watershed.)' Once EPA has approved the subsequent §303(d) list and has determined that the updated TMDL schedule submitted with the list is consistent with the expectations of national guidance, the schedule contained in this MOA shall be considered modified. The schedule contained in this MOA or-as modified by a subsequent §303 (d) lists shall be incorporated into the appropriate Performance Partnership Agreement between NJDEP and USEPA Region II.
- 10: EPA shall, as necessary, provide program and legal guidance and technical support necessary to assist NJDEP in meeting the following schedule for the establishment of TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list.

11. EPA shall review and issue its decision on all final TMDLs submitted by the State within thirty (30) days of submittal.

IV. Schedule for Establishment of TMDLs:

12. As specified below, NJDEP agrees to: public notice; respond to comments received during the public comment period; establish-and submit to EPA., TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list no later than the dates listed below: .

A.1. Bar June 30.1999:

○ **New York/New Jersey Harbor Metals (Cu, Ni, & Pb) TMDLs:**

EPA shall, in cooperation with NJDEP, public notice, respond to comments received during the public comment period and establish Phase II Metal (Cu, Ni, & Pb) TMDLs, as necessary, for the New York/New Jersey Harbor.

A.2. By September 30. 1999:

○ **Delaware Estuary Volatile Organics TMDLs:**

NJDEP shall in cooperation with the Delaware River Basin Commission (DRBC), public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for Volatile Organics in the Delaware Estuary.

A.3. By December 31, 1999:

NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watershed by December 31, 1999:

○ **Whippany River Watershed**

B. By December 31. 2000: .

NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, Basic TMDLs\*, as necessary, for the following two (2) waterbodies identified as requiring Basic TMDLs in its 1998 § 303(d) list, by December 31, 2000.:

○ **Strawbridge Lake (Burlington County)**

○ **Sylvan Lake (Burlington Township; Burlington County)**

\* Basic TMDLs are TMDLs for water quality-limited segments for which basic TMDLs are appropriate (see NJAC 7:15-7). The term Basic TMDLs only applies to the above two waters listed on the NJDEP 1998 § 303(d) list.



- C.1. By June 30, 2002:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish and submit to EPA; TMDLs, as necessary, for the following watersheds by June 30, 2002:
- **Rancocas, Cooper Rivers & Pennsauken Creek**
  - **Manasquan River**
  - **Pompton, Ramapo, Pequannock, & Wanaque Rivers**
  - **Lower Passaic River (non-tidal)**
  - **Upper Passaic & Rockaway Rivers**
- C.2. By September 30, 2002:  
○ **Delaware Estuary Dissolved oxygen TMDLs:**  
NJDEP shall, in cooperation with the DRBC, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for Dissolved Oxygen in the Delaware Estuary by September 30, 2002.
- D.1. By June 30 2003:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish, and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2003:
- **Millstone River**
  - **North & South Branch of the Raritan River**
  - **Saddle River**
  - **Hackensack River & Pascack Creek**
  - **Raritan and South Rivers & Lawrence Brook**
  - **Walkill, Pochuck, and Papakating Creeks**
  - **Lower Delaware Tributaries**
- D.2. By September 30 2003:  
○ **Delaware River/Estuary Metals, PCBs DDT & Derivatives TMDLs,**  
NJDEP, shall, in cooperation with DRBC, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for Metals, PCBs,DDT & Derivatives in the Delaware Estuary by September 30, 2003.
- E. By June 30,2004:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish', and submit to EPA., TMDLs, as necessary, for the following watersheds by June 30, 2004:
- **Upper Delaware River Tributaries**
  - **Cohansey River**
  - **Monmouth Watershed**
  - **Maurice River\***

\*EPA and NJDEP are exploring the opportunity to complete the Maurice River TMDLs for pathogens and phosphorous sooner under EPA contract.

- F.1. By June 30, 2005:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2005:
- **Elizabeth, Rahway & Woodbridge Rivers**
  - **Crosswicks Creek**
- F.2. By September 30, 2005:  
○ **Delaware River/Estuary Fecal Coliform TMDLs:**  
NJDEP shall, in cooperation with DRBC, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for Fecal Coliform in the Delaware Estuary by September 30, 2005.
- G.1. By June 30, 2006:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2006:
- **Mullica & Wading Rivers**
  - **Great Egg Harbor, Tuckahoe River**
- G.2. By June 30, 2006:  
○ **Barnegat Bay Watershed TMDLs:**  
NJDEP shall, in cooperation with the Barnegat Bay National Estuary Program, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for the Barnegat Bay Watershed, by June 30, 2006.
- H. 1. By June 30, 2007:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2007:
- **Central Delaware Tributaries**
  - **Cape May Watersheds**
- H.2. By June 30, 2007:
- **NY/NJ Harbor PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform TMDLs:**
  - NJDEP shall, in cooperation with the New York/New Jersey Harbor National Estuary Program, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform in the NY/NJ Harbor by June 30, 2007.
  - Within 9 months of the date that this MOA is signed by both parties, NJDEP with assistance from EPA, and the Harbor Estuary Program shall develop a schedule, including milestones, for the establishment of the above TMDLs. This schedule

may shorten but will not extend the time frame for TMDL development in NY/NJ Harbor. Once agreed upon by both NJDEP and EPA, any accelerated schedule for establishment of TMDLs in NY/NJ Harbor will be incorporated into this MOA.

V. Legal Effect:

13. This MOA creates no cause of action against EPA or NJDEP. In addition, the execution and implementation of this MOA does not constitute an explicit or implicit agreement, by either EPA or NJDEP to subject itself to the jurisdiction of any federal or state court. Nor shall this MOA be construed as an admission by EPA or NJDEP that either failed to implement the provisions of CWA section 303(d). Nor shall this MOA be construed as creating any right or benefit, substantive or procedural, enforceable in law or in equity, by any person or entity against EPA or NJDEP. This MOA shall not create any right to judicial review involving the compliance or noncompliance with this MOA.
14. Nothing in this MOA shall be construed to require actions by EPA or NJDEP that are inconsistent with State, or federal laws or regulations or any court order.

VI. Modification

15. EPA Region II and NJDEP understand that the covenants and commitments made pursuant to this MOA are based upon statutes and regulations currently in effect. Changes to such laws and/or regulations may require modification to this MOA. EPA and NJDEP also understand that this MOA may be modified in accordance with actions taken by courts of law. Finally, EPA and NJDEP may jointly modify this agreement to reschedule TMDL development to the extent that the overall schedule does not increase and that the delay of any one TMDL project is balanced by the advancement of another TMDL project. No modification to this schedule shall be necessary for completion of TMDLs in advance of this schedule.

VII. Termination.

16. This MOA, and all responsibilities and obligations arising herein shall remain in effect until the parties have carried out such obligations and responsibilities. However, a change in the law or issuance of a court order may also give rise to termination of this MOA. Thus, either party may submit a written notice of termination to the other party within 30 days of any court order or change in the law requiring termination of this MOA. In addition, either party may submit a written notice of termination when all responsibilities and obligations required by this MOA and the schedule herein, have been completed by both parties.

VIII. Effective Date

17. This MOA shall become effective on the date it is last signed by the parties below.

For the New Jersey Department of Environmental Protection:

By: 

Robert C. Shinn, Jr., Commissioner  
New Jersey Department of Environmental Protection

4/17/99  
Date

(For the U.S. Environmental Protection Agency, Region II:

By: 

Jeanne M. Fox, Regional Administrator  
U.S. Environmental Protection Agency, Region II

05/10/99  
Date

MAY 12 1999

Robert C. Shinn, Jr.  
Commissioner  
New Jersey Department of  
Environmental Protection  
CN 418  
Trenton, New Jersey 08625-0418

Dear Commissioner Shinn:

I have received the Memorandum of Agreement (MOA) between the New Jersey Department of Environmental Protection (NJDEP) and the U.S. Environmental Protection Agency (EPA), which establishes an 8-year schedule for the development of Total Maximum Daily Loads (TMDLs) for all waters listed on New Jersey's 1998 Section 303(d) list. EPA and NJDEP have had many discussions over the development of the MOA for TMDL development.

I am pleased to transmit to you a signed copy of the MOA and supporting documentation outlining EPA's basis for concurring on the MOA. By signing the MOA, NJDEP has committed to complete the development of TMDLs, on a watershed basis, within an expeditious timeframe. NJDEP has committed substantial financial and staff resources to this commitment. EPA has and will continue to provide NJDEP with technical support and financial assistance to ensure that every effort is made to meet the TMDL schedule.

. Thank you for your efforts to implement Section 303(d) in the State of New Jersey. I look forward to continuing to work with NJDEP in restoring and maintaining water quality in New Jersey's waters.

Sincerely,

/s/ William J. Muszynski

Jeanne M. Fox  
Regional Administrator

Memorandum of Agreement  
between  
U.S. Environmental Protection Agency Region II  
and  
New Jersey Department of Environmental Protection

Schedule to Establish Total Maximum Daily Loads  
for all Waterbodies Listed on the State of New Jersey's 1998 303(d) List

I. Background:

1. The total maximum daily load (TMDL) program is statutorily authorized by Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313 (d). CWA § 303(d) and its implementing regulations found at 40 C.F.R § 130.7, provide for:
  - A. Identification of waters for which applicable technology-based effluent limitations and other controls are not stringent enough to implement water quality standards;
  - B. Establishment of a priority ranking for water quality-limited segments (WQLSs) still requiring TMDLs; and,
  - C. Establishment of TMDLs, as necessary, for pollutants responsible for non-attainment of water quality standards in WQLSs.
2. This Memorandum of Agreement (MOA) includes a schedule to establish TMDLs for all WQLSs still requiring TMDLs, as identified in the NJDEP 1998 § 303 (d) list; and procedures by which TMDLs will be established, as necessary, for WQLSs identified on subsequent § 303 (d) lists.

II. Purpose

3. The purpose of this MOA is to set forth the basic covenants and commitments between EPA Region II and the NJDEP, with respect to the development of a schedule to establish TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list, and procedures by which TMDLs will be established, as necessary, for WQLSs identified on subsequent § 303 (d) lists.
4. EPA Region II and the NJDEP hereby agree to maintain the high level of cooperation, coordination, and technical support necessary to assure the successful and effective establishment of TMDLs in accordance with the schedule below.

### III. NJDEP and EPA Responsibilities:

5. Under this MOA, NJDEP agrees to establish TMDLs for all waterbodies included on the New Jersey 1998 § 303(d) list, or provide the information necessary to remove waterbodies from the list, as described in the schedule below. TMDLs established by NJDEP shall, at a minimum, include: an explanation of the procedures and assumptions used to develop the TMDL; the TMDL calculation; aggregate and individual waste load allocation (WLA); an aggregate load allocation (LA) or percent load reduction; and, a margin of safety (MOS).
6. The NJDEP shall provide a public comment period and respond to all comments received during the public comment period before submitting State established TMDLs to EPA for its review and decision. NJDEP and EPA shall work together to assure the TMDLs are consistent with federal and State requirements prior to being public noticed and prior to being issued as final TMDLs.
7. In fulfillment of New Jersey's responsibilities under its Continuing Planning Process, the NJDEP shall incorporate the final EPA approved/established TMDL/WLA/LA into its current Areawide Water Quality Management Plan(s). The final EPA approved/ established TMDL shall be the governing TMDL, and as such shall be included in NJDEP's current Areawide Water Quality Management Plan(s), regardless of any TMDL previously incorporated by NJDEP into its current Areawide Water Quality Management Plan(s).
8. NJDEP shall, in accordance with the following schedule, establish TMDLs for all WQLSs listed on its 1998 § 303(d) list, or propose de-listing of specific WQLSs, in accordance with the applicable provisions of § 303(d) of the Clean Water Act, and its implementing regulations found at 40 C.F.R. § 130.7 and N.J.A.C. 7:15-5 and 6. NJDEP shall develop a proposed de-listing process for New Jersey and submit it to EPA for approval. EPA and NJDEP shall work together to develop mutually acceptable de-listing procedures which meet both federal and State requirements.
9. All future §303(d) lists shall include a proposed schedule for TMDLs for all WQLSs contained on those lists and shall also include any changes or updates to the schedule for TMDLs contained in this MOA. These lists will identify any "fast-track" TMDLs. ("Fast track TMDLs" are any individual TMDLs that can be completed sooner than other TMDLs in a given watershed.) Once EPA has approved the subsequent §303(d) list and has determined that the updated TMDL schedule submitted with the list is consistent with the expectations of national guidance, the schedule contained in this MOA shall be considered modified. The schedule contained in this MOA or as modified by a subsequent §303(d) lists shall be incorporated into the appropriate Performance Partnership Agreement between NJDEP and USEPA Region II.
10. EPA shall, as necessary, provide program and legal guidance and technical support necessary to assist NJDEP in meeting the following schedule for the establishment of TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list.

11. EPA shall review and issue its decision on all final TMDLs submitted by the State within thirty (30) days of submittal.

IV. Schedule for Establishment of TMDLs:

12. As specified below, NJDEP agrees to: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for all WQLSs included on the New Jersey 1998 § 303(d) list no later than the dates listed below:

A.1. By June 30, 1999:

○ **New York/New Jersey Harbor Metals (Cu, Ni, & Pb) TMDLs:**

EPA shall, in cooperation with NJDEP, public notice, respond to comments received during the public comment period and establish Phase II Metal (Cu, Ni, & Pb)TMDLs, as necessary, for the New York/New Jersey Harbor.

A.2. By September-30,1999:

○ **Delaware Estuary Volatile Organics TMDLs:**

NJDEP shall in cooperation with the Delaware River Basin Commission (DRBC), public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for Volatile Organics in the Delaware Estuary.

A.3. By December 31, 1999:

NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watershed by December 31, 1999:

○ **Whippany River Watershed**

B. By December 31, 2000:

NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, Basic TMDLs\*, as necessary, for the following two (2) waterbodies identified as requiring Basic TMDLs in its 1998 § 303(4) list, by December 31, 2000:

○ **Strawbridge Lake (Burlington County)**

○ **Sylvan Lake (Burlington Township, Burlington County)**

\* Basic TMDLs are TMDLs for water quality-limited segments for which basic TMDLs are appropriate (see NJAC 7:15-7). The term Basic TMDLs only applies to the above two waters listed on the NJDEP 1998 § 303(d) list.



- C.1. By June 30, 2002:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA; TMDLs, as necessary, for the following watersheds by June 30, 2002:
- **Rancocas, Cooper Rivers & Pennsauken Creek**
  - **Manasquan River**
  - **Pompton, Ramapo, Pequannock, & Wanaque Rivers**
  - **Lover Passaic River (non-tidal)**
  - **Upper Passaic & Rockaway Rivers**
- C.2. September 30, 2002:  
○ **Delaware Estuary Dissolved Oxygen TMDLs:**  
NJDEP shall, in cooperation with the DRBC, public notice; respond to comments \_ received during the public comment period; establish; and submit to EPA, TMDLs for Dissolved Oxygen in the Delaware Estuary by September 30, 2002.
- D.1. By June 30, 2003:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish, and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2003:
- **Millstone River**
  - **North & South Branch of the Raritan River**
  - **Saddle River**
  - **Hackensack River & Pascack Creek**
  - **Raritan and South Rivers & Lawrence Brook**
  - **Walkill, Pochuck, and Papakating Creeks**
  - **Lower Delaware Tributaries**
- D.2. By September 30, 2003:  
○ **Delaware River/Estuary Metals, PCBs DDT & Derivatives TMDLs:**  
NJDEP shall, in cooperation with DRBC, public notice; respond to comments received during the public comment period; establish; and submit to EPA., TMDLs for Metals, PCBs, DDT & Derivatives in the Delaware Estuary by September 30, 2003.
- E. By June 30 2004:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2004:
- **Upper Delaware River Tributaries**
  - **Cohansey River**
  - **Monmouth Watershed**
  - **Maurice River"**

\* EPA and NJDEP are exploring the opportunity to complete the Maurice River TMDLs for pathogens and phosphorous sooner under EPA contract.

- F.1. By June 30, 2005:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA., TMDLs, as necessary, for the following watersheds by June 30, 2005:
- **Elizabeth, Rahway & Woodbridge Rivers**
  - **Crosswicks Creek**

- \_F.2. By September 30, 2005:  
○ **Delaware River/Estuary Fecal Coliform TMDLs:**  
NJDEP shall, in cooperation with DRBC, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for Fecal Coliform in the Delaware Estuary by September 30, 2005.

- G. 1. By June 30, 2006:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary, for the following watersheds by June 30, 2006:
- **Mullica & Wading Rivers**
  - **Great Egg Harbor, Tuckahoe River**

- G.2. BY June 30, 2006:  
○ **Barnegat Bay Watershed TMDLs:**  
NJDEP shall, in cooperation with the Barnegat Bay National Estuary Program, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for the Barnegat Bay Watershed, by June 30, 2006.

- H.1. By June 30, 2007:  
NJDEP shall: public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs, as necessary; for the following watersheds by June 30, 2007:
- **Central Delaware Tributaries .**
  - **Cape May Watersheds**

- H.2. By June 30, 2007:  
○ **NY/NJ Harbor PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform TMDLs:**
- NJDEP shall, in cooperation with the New York/New Jersey Harbor National Estuary Program, public notice; respond to comments received during the public comment period; establish; and submit to EPA, TMDLs for PCBs; Dioxins; PAHs; Pesticides; Mercury; Dissolved Oxygen; and Fecal Coliform in the NY/NJ Harbor by June 30, 2007.
  - Within 9 months of the date that this MOA is signed by both parties, NJDEP with assistance from EPA, and the Harbor Estuary Program shall develop a schedule, including milestones, for the establishment of the above TMDLs. This schedule

may shorten but will not extend the time frame for TMDL development in NY/NJ Harbor. Once agreed upon by both NJDEP and EPA, any accelerated schedule for establishment of TMDLs in NY/NJ Harbor will be incorporated into this MOA.'

V. Legal Effect:

13. This MOA creates no cause of action against EPA or NJDEP. In addition, the execution and implementation of this MOA does not constitute an explicit or implicit agreement by either EPA or NJDEP to subject itself to the jurisdiction of any federal or state court. Nor shall this MOA be construed as an admission by EPA or NJDEP that either failed to implement the provisions of CWA section 303(d). Nor shall this MOA be construed as creating any right or benefit, substantive or procedural, enforceable in law or in equity, by any person or entity against EPA or NJDEP. This MOA shall not create any right to judicial review involving the compliance or noncompliance with this MOA.
14. Nothing in this MOA shall be construed to require actions by EPA or NJDEP that are inconsistent with State, or federal laws or regulations or any court order.

VI. Modification

15. EPA Region II and NJDEP understand that the covenants and commitments made pursuant to this MOA are based upon statutes and regulations currently in effect. Changes to such laws and/or regulations may require modification to this MOA. EPA and NJDEP also understand that this MOA may be modified in accordance with actions taken by courts of law. Finally, EPA and NJDEP - may jointly modify this agreement to reschedule TMDL development to the extent that the overall schedule does not increase and that the delay of any one TEMPORAL project is balanced by the advancement of another TMDL project. No modification to this schedule shall be necessary for completion of TMDLs in advance of this schedule.

VII. Termination


16. This MOA, and all responsibilities and obligations arising herein shall remain in effect until the parties have carried out such obligations and responsibilities. However, a change in the law or issuance of a court order may also give rise to termination of this MOA. Thus, either party may submit a written notice of termination to the other party within 30 days of any court order or change in the law requiring termination of this MOA. In addition, either party may submit a written notice of termination when all responsibilities and obligations required by this MOA and the schedule herein, have been completed by both parties.

VIII. Effective Date

17. This MOA shall become effective on the date it is last signed by the parties below.

For the New Jersey Department of Environmental Protection:

By:

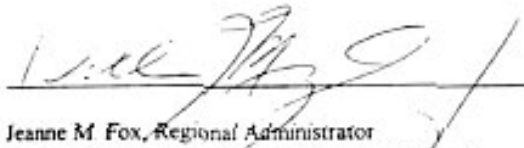
  
Robert C. Shinn, Jr., Commissioner  
New Jersey Department of Environmental Protection

Date

4/17/99

(For the U.S. Environmental Protection Agency, Region II:

By:

  
Jeanne M. Fox, Regional Administrator  
U.S. Environmental Protection Agency, Region II

Date

5/10/99